

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,

vs.

ERNEST P. RICCI

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Case No.: 1:23CR00034-001

**ERNEST P. RICCI'S EMERGENCY MOTION TO POSTPONE DATE TO REPORT
FEDERAL BUREAU OF PRISONS & REQUEST FOR HEARING**

NOW COMES Defendant, Ernest P. Ricci ("Ricci"), by and through counsel, and hereby moves the Court on an emergency basis to postpone the July 11, 2024 date which Ricci is required to report to the Federal Bureau of Prisons ("BOP") in connection with the above-identified proceeding until such time as he has undergone and completed recovery pursuant to a medically necessary surgical procedure to address a serious pre-existing and deteriorating esophageal condition.

In support of the within request, Ricci states and represents as follows:

1. On or about May 28, 2024, pursuant to Ricci's "plea agreement" with the United States, this Court sentenced Ricci to a thirty-six (36) month period of incarceration at FMC Devens.
2. Prior to Ricci's sentencing, Ricci was scheduled to undergo a surgical procedure, *to wit*, poem procedure, at Brigham & Women's Hospital in Boston, Massachusetts, on June 26, 2024, in order to address a pre-existing and deteriorating esophageal condition. Ricci previously documented to this Court his underlying condition prior to sentencing.

3. Upon information and belief, taking into account Ricci's prior scheduled June 26th medical procedure, the Court ordered Ricci to report to the BOP on July 11, 2024.
4. Notwithstanding, shortly before June 26, 2024, Ricci was advised by Brigham & Women's Hospital that the June 26th procedure would not be going forward on that date as scheduled through no fault of Ricci's or Brigham & Women's Hospital.
5. Ricci was advised that the June 26th procedure was cancelled as a result of an "out of network" health insurance coverage issue involving Ricci's health insurer, United Health. Specifically, Ricci came to learn through Brigham & Women's Hospital that a "waiver" was required from United Health given that Ricci was a Rhode Island resident and the procedure at issue was being performed out of state, and thus, deemed "out of network." The foregoing was not previously not known to Ricci insofar as United Health had authorized and/or provided coverage for other prior medical procedures that Ricci had undergone at Brigham & Women's Hospital related to his esophageal condition.
6. Ricci is apprised that the United Health "waiver" is available to him given that his condition is pre-existing, and, further, that no physician and/or medical facility in Rhode Island performs the so-called poem procedure. Ricci is in the process of securing the "waiver" from United Health with the assistance of his primary care physician.
7. Brigham & Women's Hospital has urged that Ricci's surgical procedure be rescheduled as soon as possible, and has proposed September 27, 2024, or

October 11, 2024, for the procedure to be performed, subject to the United Health “waiver.”

8. Brigham & Women’s Hospital has opined that absent the so-called poem procedure that Ricci will be unable to digest regular food and will regurgitate solid food which will assuredly result in significant weight loss and a compromised health condition¹. *See July 2, 2024 correspondence from Brigham & Women’s Hospital appended hereto as Exhibit A.*
9. Moreover, Brigham & Women’s Hospital has recommended that the recovery time for the poem procedure will be at least one (1) month which will require, at least initially, a strictly liquid diet before Ricci can transition over to solid food. *See Exhibit A appended hereto.* Even more, Ricci will be required to be in close contact with Brigham & Women’s Hospital during the recovery period. *See Exhibit A appended hereto.* Thus, incarceration at this time would not be conducive to the medically necessary procedure, or resulting recovery period.
10. Based upon the medical recommendation of Brigham & Women’s Hospital it is urgent and advisable that Ricci’s “report date” be postponed to allow for him to undergo, complete and recover from the medically necessary poem procedure.
11. Ricci submits that no party would be prejudiced should this Court grant the requested relief insofar the same is not seeking a reduction or modification of his sentence, but merely a postponement of the July 11th “report date.”

WHEREFORE, for the foregoing reasons, Ricci respectfully prays that this Court

¹ Ricci previously experienced a significant weight loss - 26 pounds (lbs) in 28 days - during a prior period of incarceration at the Donald W. Wyatt Detention Facility in or about April, 2023, as a result of his condition.

grant his emergency motion and postpone his July 11, 2024 "report date" to the BOP until such time as he undergo, complete and recover from the medically necessary surgical procedure, *to wit*, poem procedure, and that this Court award to Ricci such other further relief as this Court may deem fair, just and reasonable.

Respectfully submitted,

/s/ Christopher M. Mulhearn

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Date: July 9, 2024

EMERGENCY HEARING REQUEST

Given the nature and significance of the within request, Ricci respectfully requests an expedited or emergency in-person hearing, or such other proceeding as the Court deems necessary or appropriate to address the relief requested.

CERTIFICATION

I certify that on the 9th day of July, 2024, I electronically filed the foregoing document(s) and that they are available for viewing and downloading from the Court's CM/ECF system, and that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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/s/ Christopher M. Mulhearn

EXHIBIT A

Letter by Geremia, Jennifer Lynn, PA-C on 7/2/2024



BWH Weight Management Program @ Foxborough
20 PATRIOT PL
FOXBOROUGH MA 02035
Dept Phone #: 617-525-3597
Dept Fax #: 508-718-4011

July 2, 2024

Ernest P Ricci
180 Plain Road
North Kingstown RI 02852

To Whom It May Concern:

This letter is regarding patient Ernest Ricci DOB 10/1/61. The patient had a scheduled poem procedure scheduled for June 26, 2024 this was cancelled due to no fault of the patient or this office. The reason for the cancellation relates to out of network coverage issues with his insurance and PCP. This medical condition of Mr. Ricci is of a serious nature & needs to be rescheduled as soon as possible. Without this procedure he will soon be unable to digest regular food and will regurgitate solid foods which will thereby result in a tremendous loss of weight and other related medical issues, as already happened last April 2023 when he lost 26 lbs in 28 days while incarcerated. Any delay in the procedure will only exacerbate his condition and will leave him in a very compromising & serious health condition. This procedure needs to be rescheduled as soon as possible. The concern is if the esophagus issue isn't resolved the patient will be unable to eat & thereby not be able to consume necessary calories, protein, and nutrients or will result in increased mortality and malnutrition. This is a highly specialized procedure and not something all Gastroenterologists practice none specifically in Rhode Island and has to be done by an advanced endoscopist at a Tertiary care center. In Mr. Ricci's case he very well may be dealing with his issue for the rest of his life.

To date he has had 2 POEM procedures and now is having a 3rd procedure because the previous two did not yield adequate resolution of symptoms. It is rare that the issue was not resolved after these 2 prior procedures. But this patient has a more refractory case of achalasia requiring a third procedure

Recovery time for this procedure is at least a month after surgery where the patient would be on a strict full liquid only diet before he could transition to regular food. He will need to be in close contact with this office during the recovery time both medical providers and nutrition. This recovery time should not be during incarceration because it would be detrimental to the recovery process and could be detrimental to his long term recovery and would result in a grade decline. In the interim an additional botox injection may be necessary based on the patients ability to tolerate food intake. His last botox procedure was December 12, 2023 and normally the botox treatment lasts 3-6 months. He's is now 6.5 months into that last treatment.

This botox treatment is a temporary procedure used to allow a patient to be able to digest food while waiting for the next procedure. Should that be required a period of time will need to pass prior to scheduling the next procedure. That is determined on a case by case basis. Leaving time for the insurance coverage issue to be resolved; the next available date for this procedure would be late September/early October. At this point September 27, 2024 and October 11, 2024 subject to insurance coverage resolution and the proximity to any botox procedure, should one become necessary.

Per advanced endoscopist Dr. Thompson if this third poem procedure is not

7/2/24, 5:12 PM

Ricci, Ernest P "Ernie" (MRN 46978193) DOB: 10/01/1961 Encounter Date: 06/28/2024

successful the patient would need to see a surgeon for complex esophageal surgery which would require a 4 to 14 day stay in the hospital and prolonged recovery period

If you have any questions or concerns, please contact me or my office. 617-732-6389

Sincerely,

Jennifer Lynn Geremia, PA-C

Communication Routing Information

Recipient	Relationship	Method	Details
Ernest P. Ricci "Ernie"	Patient	Patient Gateway	